

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 600 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member

Gopinath Tripathy, aged about 83 years, S/o Late Rana Krushna Tripathy, R/o 74 Madhusudan Nagar, PS – Kharvelnagar, Bhubaneswar, Dist. – Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Communications, Department of Telecommunications, Government of India, ?West Block No.1, Room No. 2, Ground Floor, R.K.Puram, Sector-1, New Delhi – 110066.
2. Chief General Manager, Telecommunications, Orissa Telecom Circle, BSNL Bhawan, Unit-II, Ashok Nagar, Bhubaneswar – 751009, Dist. – Khurda.
3. Government of India, represented through its Secretary, Ministry of Personnel, PG & Pensions, Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003.

.....Respondents.

For the applicant : Ms.A.K.Dei, counsel

For the respondents: Mr.D.K.Mallick, counsel (Resp. No. 1 to 3)

Mr.L.Jena, counsel (Resp. No.2)

Heard & reserved on : 21.12.2018

Order on : 4.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for following reliefs:-

"In view of the facts stated in paragraph 4 and 5, this Hon'ble Tribunal may kindly be pleased to allow this application by setting aside the letter No. DGM (HR&A)-OD/Misc/2015-16 dated 23.6.2016 issued by the Dy. General Manager (HR&A) office of Chief General Manager, BSNL, Odisha circle, Bhubaneswar and pending disposal of the OA the respondents be directed to pay the arrear amount of revised pension to the applicant."

2. When the applicant was working as Director, Telecom (HQ) in the office of the respondent no. 2, the CBI, on 7.8.1997, lodged an FIR against him under section 13(1) read with section 13(2) of the Prevention of Corruption Act, 1988 on a complaint relating to the year 1992-93. Earlier on 24.11.1993, a charge-sheet had been served on the applicant earlier under the rule 9 of the CCS (Pension) Rules, 1972 (referred hereinafter as 'rules') and in pursuance to the

charge-sheet, the punishment of deduction of 25% of pension for a period of 5 years had been imposed on the applicant vide order dated 23.4.1996. The applicant, being aggrieved by the said punishment filed the OA No. 385/1996 and vide order of the Tribunal dated 9.11.2004 (Annexure-A/1), the punishment order was quashed. The respondents have moved Hon'ble High Court against the order dated 9.11.2004 of this Tribunal in W.P. (C) 8360/2006, which is subjudice.

3. CBI filed charge-sheet against the applicant who, after trial in the court, was convicted vide the judgment dated 24.12.2012 (Annexure-A/2). The applicant has filed Criminal Appeal against the said conviction order, which is sub judice. The applicant received the show cause notice dated 22.8.2013 under the rule 9 for a proposed penalty of 100% pension cut. He submitted the reply stating that he had been already filed appeal against conviction for criminal offence. The order dated 14.7.2015 was passed by the competent authority imposing the penalty of 100% cut in pension on the applicant and against the said punishment order, the applicant has filed the OA No. 612/2015, which is sub judice.

4. The present dispute is that the applicant has not been paid the differential revised pension payable to him from 1.1.2016 till imposition of the penalty of 100% cut in pension. Case of the applicant is that the penalty order dated 14.7.2015 stopping 100% of the pension is effective from the month of August, 2015 and hence, he is entitled for the revised pension from 1.1.2006 till July, 2015.

5. The respondent no.2 has filed Counter, opposing the OA and stating that the proceeding under the rule 9 of the CCS(Pension) Rules, 1972 was initiated in pursuance to the judgment dated 24.12.2012 in which the applicant was convicted and the penalty of withholding of 100% of the pension has been imposed on the applicant vide order dated 14.7.2015. It is stated that in view of the order dated 14.7.2015, no arrear claim on pension is payable to the applicant. Similar contention was taken by the respondent No. 1 and 3 in their counter.

6. Heard learned counsel for the applicant, who argued that the applicant is entitled for the differential pension that would be payable due to revision of the pension from 1.1.2006 till the month of July, 2015 when the penalty order will take effect. Learned counsel for the respondents submitted that since the order dated 14.7.2015 imposing the penalty of withholding of 100% of the pension, it will have retrospective application and no arrear will be payable to the applicant.

7. We have considered the submissions and perused the pleadings on record. The penalty order dated 14.7.2015, copy filed by the applicant's counsel, states as under:-

"5. AND WHEREAS, the UPSC tendered their advice dated 27th Feb, 2015. The case records were examined carefully by the Commission and in the light of their observations and findings and after taking into account all other aspects relevant to the case, the Commission noted that the charges established against the CO, constitute grave misconduct on his part and considered that the ends of justice would be met in this case if the penalty of 'withholding of 100% of the monthly pension, otherwise admissible to him, on a permanent basis' is imposed on the CO, Shri Gopinath Tripathy. They advised accordingly.

6. AND WHEREAS, the observations alongwith the advice of UPSC appeared in order in the first instance and hence, the same was tentatively accepted. However, before taking a decision, as per the DOP&T's new instructions dated 6th Jan, 2014, the advice of UPSC was forwarded to the CO, Shri Gopinath Tripathy for making representation, if any,. The representation dated 25.5.2015 of the CO was received through the Vigilance Officer, Odisha Circle, The CO has inter alia, stated that a disciplinary proceeding was instituted against him and penalty of 25% cut in pension was imposed for 5 years on 23.4.1996 and was also implemented on 1.9.2008. Said order was challenged in CAT, who had set aside the order. The same has been challenged by the Government in the High Court of Orissa. The matter is thus sub judice and hence the present proceeding is not maintainable in law. The CO has also filed an appeal against the judgment of conviction passed by the CBI Court in High Court of Orissa and is sub judice. So the proposed proceeding should be kept in abeyance till its finalization. He has requested to drop the proceeding against him.

7. AND WHEREAS, the representation made by the CO has been examined in detail. It is observed that the points raised by the CO have already been considered earlier by the Disciplinary Authority. No new point which may have bearing upon the outcome of the Inquiry conducted against the CO, Shri Gopinath Tripathy has been raised. There is no bar on conduct of the criminal proceedings after his conviction for the same charge. Hence the request of the CO to withdraw the criminal proceedings is not worth consideration. The fact the CO failed to maintain devotion to duty is echoed in the analysis of UPSC. The quantum of penalty as advised by the Commission is fair and just and commensurate with the gravity of the offence in view of the weight of evidence on record.

8. NOW THEREFORE, after taking into consideration the records of the case, advice of the UPSC, representation of the CO, overall circumstances of the case, the President accepts the advice of the UPSC and imposes the penalty of 'withholding of 100% of the monthly pension, otherwise admissible to the CO, on permanent basis' on Shri Gopinath Tripathy."

8. From the facts of the case as narrated in the order dated 14.7.2015, the penalty has been imposed in pursuance to the conviction of the applicant and it is imposed in consultation with the UPSC. As stated by the applicant in the OA (para 4.6 of the OA), the order dated 14.7.2015 has been challenged by the applicant in OA No. 612/2015 which is sub judice. The order of conviction has also been challenged in the criminal appeal before Hon'ble High Court. It is noted that the order dated 14.7.2015 does not state that it will have retrospective application, There is nothing in the order dated 14.7.2015 by which, the pension payable to the applicant till the date of issue of the said order will not be payable. In other words, the pension as per the rules is

payable to the applicant till 14.7.2015, when the penalty order for withholding of 100% of the pension takes effect. Normally, a pensioner is entitled for the revised pension after issue of the order of the competent authority revising the pension w.e.f. 1.1.2006 after recommendation of the 6th CPC takes effect.

9. When a departmental or judicial proceeding is pending, then it is necessary to pay provisional pension to the concerned retired employee under the rule 69 of the CCS (Pension) Rules, 1972 which states as under:-

"69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of [Rule 9](#), the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

1Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Footnote : 1. Inserted by G.I., Dept. of Per. & A.R., Notification No. 30/2/80-Pension Unit, dated the 13th February, 1981."

Hence, the provisional pension is to be paid at the rate of maximum of pension that is payable and it will include the benefit of the revision of pension on account of the report of the Central Pay Commission.

10. In this case, the order dated 14.7.2015 does not state anything about withholding of any arrear pension payable to the applicant till the date of issue of the order withholding 100% of the pension. We are, therefore, of the considered view that in absence of any order of the competent authority under the rule 9 of the CCS (Pension) Rules, 1972 about the order having retrospective effect and about withholding of the arrear pension payable to the applicant, if any, the amount claimed by the applicant towards arrear pension till 14.7.2015 cannot be withheld. The respondents have also not furnished any

rules or guidelines of the Government in support of their averment that after withholding of 100% of pension, the past pension dues on account of revision of pension will not be payable. Hence, this OA is disposed of with a direction to the respondents to pay the differential pension payable to the applicant from 1.1.2006 till 14.7.2015 on account of revision of pension as per law, if the same has not been paid to him already. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath